**THE HON'BLE SRI JUSTICE C.V.RAMULU**

**WRIT PETITION NO.16044 OF 2000**

**Date: 25th September 2006**

Between:
A.Suresh Babu, son of A.Koteswara Rao,
Aged 35 years, Occupation: Employee,
R/o Block No.32, Ajit Singh Nagar,
Vijayawada-520015.

…. Petitioner.

And

1. Deputy Registrar of Cooperative Societies,
   Vijayawada and 2 others.

…. Respondents.

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**ORDER:**

This writ petition is filed being aggrieved by the order dated 06th July 2000 made in O.A.No.51 of 1998 on the file of the A.P. Cooperative Tribunal, Vijayawada, wherein the order dated 15th December 1997 made in Claim Petition No.297 of 1995-96 by the Deputy Registrar of the Cooperative Societies, Vijayawada, was confirmed.

2. It appears that the petitioner was a Sales Assistant and an employee of the second respondent society. Admittedly, he worked as a Sales Assistant in the society from 11.8.1992 to 16.3.1993. In the year 1994 it was found that there was a shortage of goods worth Rs.1,87,654-90 ps. in the society, therefore, on the basis of a report dated 01.8.1994 submitted by the Senior Inspector, a show cause

notice dated 06.8.1994 was issued. The petitioner submitted his explanation on 27.8.1994. Having not satisfied with the explanation, a claim under Section 61 of the A.P. Cooperative Societies Act (for short 'the Act') was made before the Arbitrator. On behalf of the society, P.W.1 was examined and Exs.P-1 to P-6 were marked. On behalf of the petitioner, D.W.1 was examined and no documents were marked. After a detailed consideration of entire evidence on record, the Arbitrator came to the conclusion that the petitioner is liable to pay an amount of Rs.1,87,654-11 ps. with 18 per cent interest thereon. Aggrieved by the same, the petitioner carried the matter in appeal before the A.P. Cooperative Tribunal, Vijayawada. The Appellate Tribunal, after a detailed consideration of the order passed by the Arbitrator and after going into the material placed before it, came to the conclusion that there is no necessity to interfere with the award and decree passed by the Arbitrator, and thus, dismissed the appeal. Aggrieved by the same, the present writ petition is filed.

3. Learned counsel for the petitioner Sri P.Srinivas, strenuously contended that absolutely there is no acceptable evidence either before the arbitrator or before the appellate authority to come to the conclusion that the petitioner is liable to pay an amount of Rs.1,87,654-11 ps. which was found to be shortage in the stocks. The Senior Inspector who submitted his report on 01.8.1994 was not examined before the Court. Further, Exs.P-3 and P-5 were not marked through the persons who prepared the same nor the persons prepared examined separately. Further, the petitioner was on leave on many occasions and somebody was officiating him temporarily and that person was also not examined. Therefore, the award passed by the Arbitrator as confirmed by the Tribunal are liable to be set aside.

4. Per contra, learned counsel for the respondent Sri K.Rajanna submitted that since no ground is made out to interfere with the award passed by the Arbitrator as confirmed by the Tribunal, the writ petition is liable to be dismissed.

5. I have given my earnest consideration to the respective submissions made by the learned counsel on either side and also perused the other material made available on record.

6. At the outset, I am of the opinion that the Tribunal has considered each and every aspect of the factual matrix as contended by the learned counsel for the petitioner herein and passed a cogent and reasoned order and it does not require any interference by this Court. It is suffice to notice the findings of the Tribunal as under:

> " The then Managing Director of the respondent stores by name Sri P.Krishna Mohan was examined as P.W.1, before the lower court. He has deposed about the work entrusted to the appellant herein and also filed certain documents, which were marked as Ex.P-1 to P-6. Ex.P-1 is stock statement dated 11.8.92 for Rs.2,52,608-00, Ex.P-2 is statement of department stocks verification dated 27.10.92 for Rs.2,73,179-90 ps. He has also filed Ex.P-3 liability Register along with signed indents and abstracts. Ex.P-4 is statement of handing over charge to Sri B.Ramireddy, who is his successor dated 16.3.1993. Ex.P-6 is statement showing the sale proceeds of gunnies included in the sales abstract from 12.8.92 to 1.1.1993, which was prepared by Sri P.George. P.W.1 has categorically stated the appellant herein who has assumed charge on dt.11.8.92 kept as in-charge of the packing section has taken over stocks worth Rs.2,52,608-65 from his predecessor as per the statement signed by him Ex.P-2 dated 27.10.1992. The

> departmental stocks verification was conducted and the stocks were valued at Rs.2,73,179-90. As against this the liability register showed the stock value as Rs.2,91,328-06 thus leaving deficit of Rs.18,148-16 paise. He has also further deposed that the appellant herein handed over charge on 16.3.1993 to his successor, the stocks were valued at Rs.1,81,442-15 under Ex.P-4. The stocks as per the liability register should be Rs.3,19,803-85 and thus there was a deficit of Rs.1,38,361-70 worth of stocks. He has also further deposed that the defendant herein wrongly included the value of sale proceeds of gunnies worth Rs.16,070-50."

The learned counsel for the petitioner also stated that there was no system of liability available in the society. In this regard, it may be necessary to notice the findings of the Tribunal.

> " In this case, the defendant failed to hand over existing stock as on the date of handing over charge to his successor as such, he is responsible for the deficit caused in the stock. There is no cross-examination for P.W.1 by the learned counsel for the appellant that the Senior Inspector did not conduct stock verification properly. Admittedly, the report of the Senior Inspector is only administrative report. After receipt of the said report from the senior Inspector, the Deputy Registrar issued show cause notice to the appellant herein, for that the appellant gave his reply wherein, he has not at all disputed the *locus standi* or the appointment of Senior Inspector except to deny his liability. Under such circumstances, the question of examining the said Senior Inspector does not arise."

Apart from this, it may also be necessary to notice the following findings of the Tribunal as under.

> " In the explanation given to the show cause notice, the appellant did not raise the contention that there was no liability system was in vogue. Anyhow, the non-filing of any circular to that effect will not improve the case of the appellant herein. The learned counsel for the appellant tried to elicit from P.W.1 to establish that there was no liability system during he tenure of appellant herein but he did not elicit any useful information to the effect. The P.W.1 categorically stated that the liability system was in vogue. Even the appellant who has been examined as D.W.1 before the lower court has categorically admitted that he was aware of the liability system, which was existing in the respondent organization i.e., Vijaya Krishna Super Bazar. This statement itself is sufficient to show the contention of the appellant that there was no liability system during his tenure in the respondent is false."

This would show that the entire findings recorded by the Arbitrator as confirmed by the Tribunal are on the basis of records maintained by the society, but not on the basis of any oral evidence. Under those circumstances, I am of the opinion that neither the Arbitrator nor the Tribunal has committed any error calling for any interference of this Court under Article 226 of the Constitution of India. They are all pure questions of facts, which were concluded concurrently; therefore, the writ petition is liable to be dismissed.

7. Further, learned counsel for the petitioner tried to impress upon the court by relying upon the judgments in **Challa Sanyasinaidu V. Deputy Registrar of Cooperative Societies, Srikakulam**[1] for the purpose of conducting a detailed enquiry into the matter and in **United India Insurance Company Limited, Hyderabad V. Mohd. Khaj**

**Rasool Sayyed @ Mohd. Khaja Main Shaik and another**[2] and also in **Narboda Devi Gupta V. Birendra Kumar Jaiswal and another**[3] to show that the strict rules of evidence have to be followed and there is no acceptable evidence in this regard. I am of the opinion that all the judgments have no relevance to this case.

8. The writ petition is accordingly dismissed. No order as to costs.

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**C.V.RAMULU, J.**

Date: 25th September 2006.
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[1] 1998(1) ALT 482 (DB)

[2] 2003(5) ALD 162

[3] (2003) 8 Supreme Court Cases 745